

United States District Court
Middle District of Tennessee

CASE NUMBER: 3:15-CV-00847

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OCT 19 2015

U.S. DISTRICT COURT
MID. DIST. TENN.

CRAIG CUNNINGHAM, PLAINTIFF, PRO SE

V.

ENAGIC USA, INC., PETER POLSELLI, TERRY COLLINS, RICK FREEMAN,
ANGELA LINER, CHRISTIAN KINNEY, THE 7 FIGURE WEALTH CORPORATION,
CORAZON MANAGEMENT GROUP, INC., JEFFREY HOWARD,
SUSIE TREMBLAY-BROWN, PETER WOLFING, MULTIPLEX SYSTEMS, INC. AND
JOHN/JANE DOES 1-10

DEFENDANT JEFREY HOWARD'S

ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

1. Defendant Jeffrey Howard files herein it's Answer to Plaintiff's Amended Complaint.
2. Jeffrey Howard ("Howard") is an individual natural person with a mailing address of 925 Lakeville Street #233, Petaluma, California 94952.
3. Howard has no specific association with, or knowledge regarding the accuracy of Plaintiff's claims with regard to, any other Defendants in this action as alleged in Paragraphs 1 through 13 of his Amended Complaint, with the exception of Corazon Management Group, Inc. ("CMG"), as CMG's authorized agent, officer and attorney-in-fact, Susie Tremblay-Brown, an independent Virtual Assistant, and Enagic USA, Inc. ("Enagic"), with which CMG is associated as an independent contractor.
4. It should be noted by the Court that Defendant Howard has not been served in this case, but through his association with CMG,

1 has specific knowledge of the case being filed, and his being
2 named as a defendant, and therefore, files this Answer to
3 Plaintiff's Amended Complaint in an effort to protect his rights
4 in this case.

5
6 **DEFENDANT JEFFREY HOWARD'S RESPONSES**

7 **TO PLAINTIFF'S JURISDICTION AND FACTUAL ALLEGATION**
8

9 5. In response to Paragraph 14 of Plaintiff's Amended
10 Complaint, Defendant Howard DENIES, and/or has no specific
11 knowledge pertaining to, the allegation.

12 6. In response to Paragraph 15 of Plaintiff's Amended
13 Complaint, Defendant Howard DENIES, and/or has no specific
14 knowledge pertaining to, the allegation.

15 7. In response to Paragraph 16 of Plaintiff's Amended
16 Complaint, Defendant Howard DENIES, and/or has no specific
17 knowledge pertaining to, the allegation.

18 8. In response to Paragraph 17 of Plaintiff's Amended
19 Complaint, Defendant Howard DENIES, and/or has no specific
20 knowledge pertaining to, the allegation.

21 9. In response to Paragraph 18 of Plaintiff's Amended
22 Complaint, Defendant Howard DENIES, and/or has no specific
23 knowledge pertaining to, the allegation.

24 10. In response to Paragraph 19 of Plaintiff's Amended
25 Complaint, Defendant Howard DENIES, and/or has no specific
26 knowledge pertaining to, the allegation.
27
28

1 11. In response to Paragraph 20 of Plaintiff's Amended
2 Complaint, Defendant Howard DENIES, and/or has no specific
3 knowledge pertaining to, the allegation.

4 12. In response to Paragraph 21 of Plaintiff's Amended
5 Complaint, Defendant Howard DENIES, and/or has no specific
6 knowledge pertaining to, the allegation.

7 13. In response to Paragraph 22 of Plaintiff's Amended
8 Complaint, Defendant Howard DENIES, and/or has no specific
9 knowledge pertaining to, the allegation.

10 14. In response to Paragraph 23 of Plaintiff's Amended
11 Complaint, Defendant Howard DENIES, and/or has no specific
12 knowledge pertaining to, the allegation.

13 15. In response to Paragraph 24 of Plaintiff's Amended
14 Complaint, Defendant Howard DENIES, and/or has no specific
15 knowledge pertaining to, the allegation.

16 16. In response to Paragraph 25 of Plaintiff's Amended
17 Complaint, Defendant Howard DENIES, and/or has no specific
18 knowledge pertaining to, the allegation.

19 17. In response to Paragraph 26 of Plaintiff's Amended
20 Complaint, Defendant Howard DENIES, and/or has no specific
21 knowledge pertaining to, the allegation.

22 18. In response to Paragraph 27 of Plaintiff's Amended
23 Complaint, Defendant Howard DENIES, and/or has no specific
24 knowledge pertaining to, the allegation.

25 19. In response to Paragraph 28 of Plaintiff's Amended
26 Complaint, Defendant Howard DENIES, and/or has no specific
27 knowledge pertaining to, the allegation.
28

1 20. In response to Paragraph 29 of Plaintiff's Amended
2 Complaint, Defendant Howard DENIES, and/or has no specific
3 knowledge pertaining to, the allegation.

4 21. In response to Paragraph 30 of Plaintiff's Amended
5 Complaint, Defendant Howard DENIES, and/or has no specific
6 knowledge pertaining to, the allegation.

7 22. In response to Paragraph 31 of Plaintiff's Amended
8 Complaint, Defendant Howard DENIES, and/or has no specific
9 knowledge pertaining to, the allegation.

10 23. In response to Paragraph 32 of Plaintiff's Amended
11 Complaint, Defendant Howard DENIES, and/or has no specific
12 knowledge pertaining to, the allegation.

13 24. In response to Paragraph 33 of Plaintiff's Amended
14 Complaint, Defendant Howard DENIES, and/or has no specific
15 knowledge pertaining to, the allegation.

16 25. In response to Paragraph 34 of Plaintiff's Amended
17 Complaint, Defendant Howard DENIES, and/or has no specific
18 knowledge pertaining to, the allegation.

19 26. In response to Paragraph 35 of Plaintiff's Amended
20 Complaint, Defendant Howard DENIES, and/or has no specific
21 knowledge pertaining to, the allegation.

22 27. In response to Paragraph 36 of Plaintiff's Amended
23 Complaint, Defendant Howard DENIES and/or has no specific
24 knowledge pertaining to, the allegation.

25 28. In response to Paragraph 37 of Plaintiff's Amended
26 Complaint, Defendant Howard DENIES, and/or has no specific
27 knowledge pertaining to, the allegation.
28

1 29. In response to Paragraph 38 of Plaintiff's Amended
2 Complaint, Defendant Howard DENIES, and/or has no specific
3 knowledge pertaining to, the allegation.

4 30. In response to Paragraph 39 of Plaintiff's Amended
5 Complaint, Defendant Howard DENIES, and/or has no specific
6 knowledge pertaining to, the allegation.

7 31. In response to Paragraph 40 of Plaintiff's Amended
8 Complaint, Defendant Howard DENIES, and/or has no specific
9 knowledge pertaining to, the allegation.

10 32. In response to Paragraph 41 of Plaintiff's Amended
11 Complaint, Defendant Howard DENIES, and/or has no specific
12 knowledge pertaining to, the allegation.

13 33. In response to Paragraph 42 of Plaintiff's Amended
14 Complaint, Defendant Howard DENIES, and/or has no specific
15 knowledge pertaining to, the allegation.

16 34. In response to Paragraph 43 of Plaintiff's Amended
17 Complaint, Defendant Howard DENIES, and/or has no specific
18 knowledge pertaining to, the allegation.

19 35. In response to Paragraph 44 of Plaintiff's Amended
20 Complaint, Defendant Howard DENIES, and/or has no specific
21 knowledge pertaining to, the allegation.

22
23 **DEFENDANT HOWARD'S AFFIRMATIVE DEFENSES IN RESPONSE**
24 **TO PLAINTIFF'S AMENDED COMPLAINT AND CAUSES OF ACTION**
25

26 36. DEFENDANT HOWARD'S FIRST AFFIRMATIVE DEFENSE. Plaintiff has
27 failed to properly serve Defendant in this case because he
28 personally mailed a copy of the Summons and Amended Complaint via

1 Certified Mail himself, rather than through a Marshal, under
2 Middle District of Tennessee Local Rule LR4.01(c). Furthermore,
3 the USPS postmarks on the envelopes with Plaintiff's service
4 documents originate from Dallas, Texas, outside the jurisdiction
5 of the Marshal in the jurisdiction of filing. The document
6 package received was not properly served, and did not include
7 Certificate of Service showing proper service on other Defendants
8 in this action, although clearly other Defendants were served in
9 this action prior to Defendant Howard being named in this action.

10 37. DEFENDANT HOWARD'S SECOND AFFIRMATIVE DEFENSE. Plaintiff
11 has failed to properly serve Defendant in this case because
12 Plaintiff neither requested of Defendant, nor moved the Court
13 for, a proper Waiver of Service, under USDC Rule 4(d).

14 38. DEFENDANT HOWARD'S THIRD AFFIRMATIVE DEFENSE. Plaintiff has
15 on numerous occasions, from various parties, specifically
16 requested information regarding earning money from home or
17 starting a home-based business and as such regularly appears and
18 reappears on database lists of business opportunity seekers.

19 39. DEFENDANT HOWARD'S FOURTH AFFIRMATIVE DEFENSE. Plaintiff is
20 actively seeking out new ways to have his phone numbers appear on
21 business opportunity phone lists while posing as an opportunity
22 seeker in a calculated and specific effort to strategically
23 position himself to file frivolous lawsuits such as the subject
24 action, in multiple jurisdictions, against multiple defendants,
25 wasting both the Court's valuable time, and the time of
26 legitimate businesspeople who are actively supporting the economy
27 and their families.
28

1 40. DEFENDANT HOWARD'S FIFTH AFFIRMATIVE DEFENSE. Plaintiff's
2 complaint is frivolous and without legitimate basis, filled with
3 hearsay, opinions, conjecture, assumptions and conclusions drawn
4 with the sole intent to support the frivolous nature of this
5 complaint. It is clear from Plaintiff's allegations that he has a
6 strong, personal negative association with the home-based
7 business industry.

8 41. DEFENDANT HOWARD'S SIXTH AFFIRMATIVE DEFENSE. On two
9 separate occasions, first on July 15, 2015 and again on August
10 26, 2015, Plaintiff placed an INBOUND telephone call to a
11 marketing phone number, listened to 25 minutes of recorded
12 information regarding a specific opportunity and left voicemail
13 messages in both cases, specifically requesting additional
14 information regarding the details of the opportunity. Defendant
15 Howard maintains the original voicemail recordings of these
16 requests.

17 42. DEFENDANT HOWARD'S SEVENTH AFFIRMATIVE DEFENSE. Defendant
18 Howard had numerous conversations with Plaintiff, who indicated
19 he was an MBA and owned a business selling electronic smoking
20 paraphernalia. In fact, when asked directly, Plaintiff also
21 indicated that he was seeking out additional legitimate
22 entrepreneurial opportunities. Plaintiff repeatedly and
23 continuously expressed interest in becoming involved with the
24 proposed business venture.

25 43. DEFENDANT HOWARD'S EIGHTH AFFIRMATIVE DEFENSE. Plaintiff
26 specifically indicated interest in the opportunity at every stage
27 of the marketing and interview process. On approximately
28 September 2, 2015, Plaintiff also specifically stated: "I'm

1 in...what is the next step?" at which point enrollment
2 instructions and financing options were presented to him through
3 an email communication. Plaintiff then indicated that he had a
4 credit score of 720 and, based on that, had applied for a
5 Comerica VISA card (which incurs zero interest, zero fees for one
6 year) through the resources provided to him through our
7 correspondence. He indicated that he had received approval from
8 Comerica for a credit line of \$10,000 and would place his order
9 forthwith.

10 44. DEFENDANT HOWARD'S NINTH AFFIRMATIVE DEFENSE. Plaintiff has
11 falsely stated in this Amended Complaint that calls placed to him
12 were to a mobile or cell phone. The telephone number dialed was
13 615-212-9191. This was the only number in the telephone system
14 listed for Plaintiff, and is the number from which he made both
15 of the inbound calls to our recorded information system as
16 referenced in Paragraph 40, above.

17 45. DEFENDANT HOWARD'S TENTH AFFIRMATIVE DEFENSE. A Google
18 search of Plaintiff's alleged mobile phone number, 615-212-9191,
19 shows numerous entries indicating that number is listed and owned
20 by the following business:

21
22 Smoke Power Electronic Cigarettes
23 3601-B Nolensville Pike
24 Nashville, TN 37211
25 Phone: (615) 212-9191
26 Email: sales@smokepower.com
27 Web: www.smokepower.com

28 46. DEFENDANT HOWARD'S ELEVENTH AFFIRMATIVE DEFENSE. A search
of Plaintiff's alleged mobile phone number, 615-212-9191, on
PhoneValidator.com (a trusted and recognized resource for showing

1 a phone's status as either landline, VOIP or mobile) indicates
2 the following:

3
4 Phone Number: 615-212-9191
5 Date of this Report: October 15, 2015
6 Phone Line Type: LANDLINE [emphasis added]
7 Phone Company: BANDWIDTH.COM - POSSIBLE GOOGLE VOICE OR OTHER VIRTUAL
8 PHONE NUMBER
9 Phone Location: SPRINGFIELD, TN

10
11 47. DEFENDANT HOWARD'S TWELFTH AFFIRMATIVE DEFENSE. A search of
12 Plaintiff's alleged mobile phone number, 615-212-9191, on
13 SearchBug.com (another trusted and recognized resource for
14 showing a phone's status as either landline, VOIP or mobile)
15 indicates the following:

16 Phone Number (615) 212-9191 Is Valid
17 Owner Name: not searched Find Name
18 Phone Type: LANDLINE [emphasis added]
19 Carrier: BANDWIDTH.COM CLEC (OCN: 124F
20 Area Code: Tennessee: Nashville, Murfreesboro,
21 Springfield, Lebanon, Dickson and north central
22 Tennessee. Split from 901.
23 Location: SPRINGFLD
24 Local Calling Area: Nashville TN
25 Time Zone: Central Daylight Time (CDT)

26 Phone Line Type: Landline vs. Cell Phone is
27 approximately 95% accurate. Less than 5% of numbers
28 are transferred or ported from landlines to cell
phones or vice versa.
Landline Carrier: approximately 97% accurate. Very few
people transferred their home number to a different
landline carrier.

29
30 48. DEFENDANT HOWARD'S THIRTEENTH AFFIRMATIVE DEFENSE.
31 Plaintiff's phone number is clearly a landline or VOIP number and
32 is not a mobile phone, therefore, there has been no breach of any
33 code under the TCPA or violation of 47 USC 227(b) as alleged by

1 Plaintiff. Further, Plaintiff's phone number is also listed as a
2 business phone, not a personal phone, as indicated above.

3 49. DEFENDANT HOWARD'S FOURTEENTH AFFIRMATIVE DEFENSE.

4 Plaintiff had the opportunity at any time to have this number or
5 any other number automatically or manually removed from any
6 further marketing call lists and chose to remain in the system,
7 with the specific ongoing intent of soliciting opportunities to
8 bring additional frivolous lawsuits.

9 50. DEFENDANT HOWARD'S FIFTEENTH AFFIRMATIVE DEFENSE. Plaintiff
10 has a long and colorful history as a "professional plaintiff," as
11 indicated by the continuing and ongoing amendments to this
12 Complaint, and a history of filing previous complaints in similar
13 actions, such as Craig Cunningham v. Alliance Security, et al,
14 Case Number 3:14-0769, filed last year, and as many as twelve
15 other lawsuits over the past three years. Further confirmation of
16 Plaintiff's ongoing history and status as a "professional
17 plaintiff" as well as his clearly deceptive "baiting and
18 enticement" strategy is bolstered by an article in the Dallas
19 Observer, dated over five years ago, entitled: "BETTER OFF
20 DEADBEAT: CRAIG CUNNINGHAM HAS A SIMPLE SOLUTION FOR GETTING BILL
21 COLLECTORS OFF HIS BACK. HE SUES THEM," wherein Plaintiff's story
22 of non-payment of his financial obligations led him to searching
23 for loopholes in the debt collection system in order to escape
24 those obligations and in fact, seems to take great pride in such
25 behavior. The article may be found at the following URL:
26 [http://www.dallasobserver.com/news/better-off-deadbeat-craig-](http://www.dallasobserver.com/news/better-off-deadbeat-craig-cunningham-has-a-simple-solution-for-getting-bill-collectors-off-his-back-he-sues-them-6419391)
27 [cunningham-has-a-simple-solution-for-getting-bill-collectors-off-](http://www.dallasobserver.com/news/better-off-deadbeat-craig-cunningham-has-a-simple-solution-for-getting-bill-collectors-off-his-back-he-sues-them-6419391)
28 [his-back-he-sues-them-6419391](http://www.dallasobserver.com/news/better-off-deadbeat-craig-cunningham-has-a-simple-solution-for-getting-bill-collectors-off-his-back-he-sues-them-6419391)

1 51. DEFENDANT HOWARD'S SIXTEENTH AFFIRMATIVE DEFENSE. Defendant
2 Howard participates only in legitimate and firmly established
3 marketing opportunities in the direct sales and network marketing
4 industry, not in "get rich quick" or "pyramid schemes" as alleged
5 by Plaintiff.

6 52. DEFENDANT HOWARD'S SEVENTEENTH AFFIRMATIVE DEFENSE.
7 Defendant Howard made no product claims, health claims,
8 specifically or implied, or guarantees of business viability,
9 particularly anyone's ability to "make money quickly" either
10 individually or as an agent of CMG, as claimed by Plaintiff with
11 regard to other Defendants in this case.

12 53. DEFENDANT HOWARD'S EIGHTEENTH AFFIRMATIVE DEFENSE. As an
13 agent of CMG, and separately, Howard makes every ongoing
14 reasonable effort to comply with all applicable regulations
15 regarding telephone marketing through regular and ongoing
16 screening of its databases against the national do not call
17 lists, mobile phone number lists and all available means to
18 assure it only connects with legitimate and viable seekers of
19 home-based business opportunities. Further, Plaintiff has failed
20 to state that he was, or has ever attempted to be, on any Do Not
21 Call list.

22 54. DEFENDANT HOWARD'S NINETEENTH AFFIRMATIVE DEFENSE. Howard
23 has no direct or indirect relationship with any other Defendant
24 named in Plaintiff's Amended Complaint, with the exception of its
25 independent business relationship with Enagic, and it's
26 relationship with Defendant Susie Tremblay-Brown, who is an
27 independent Virtual Assistant, contracted only to serve in a
28 technical support and systems set-up capacity, and to the best of

Howard's knowledge, has never placed an automated call through any system, further evidence that Plaintiff is simply fishing and "naming everyone" in his frivolous lawsuits.

55. DEFENDANT HOWARD'S TWENTIETH AFFIRMATIVE DEFENSE. Plaintiff has failed to show legal standing to bring a civil action in this case as he has not been personally damaged in any way, and has suffered no loss or damage, monetarily or otherwise. Plaintiff has had multiple opportunities, over the course of many years, to bring a full stop to any marketing contact from Defendant (or anyone else), simply by automatically or manually requesting to be removed from any marketing lists, a request which would have been immediately honored, but which never took place. Instead, Plaintiff has chosen to continue his ongoing baiting and enticement strategy in an effort to bring frivolous lawsuits.

56. DEFENDANT HOWARD'S TWENTY-FIRST AFFIRMATIVE DEFENSE. Because Plaintiff has no legitimate basis for bringing this action for damages (as no actual damages have occurred), a civil action is not justified in this case and, as such, Plaintiff's action has no civil basis and is brought outside of proper jurisdiction. Should any alleged violation of any code referenced herein actually occur, jurisdiction would fall on the appropriate regulatory bodies to enforce any such alleged violation.

57. DEFENDANT HOWARD'S TWENTY-SECOND AFFIRMATIVE DEFENSE. Plaintiff has failed to state a specific claim or action by any Defendant under the TCPA or violation of 47 USC 227(b) for which he can claim damages. Plaintiff has only alleged that "multiple automated calls" took place.

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CONCLUSION

Based upon the foregoing, Defendant Howard, prays for the following:

1. That Plaintiff takes nothing by his complaint.
2. That Plaintiff receives sanctions for filing frivolous and unfounded lawsuits against Defendant.
3. That Plaintiff be enjoined from filing further actions against Defendant Howard on similar grounds.
4. That Defendant Howard be dismissed with prejudice from the action herein.
5. That any attorney's fees incurred on behalf of Defendants be borne by Plaintiff, including any associated fees and costs.
6. For such other and further relief as the Court may deem proper.

Dated: October 15, 2015

Respectfully submitted:



Jeffrey Howard, Pro Se

CERTIFICATE OF SERVICE

I do hereby certify that on this the 16th day of October 2015, this Certificate of Service for

**DEFENDANT JEFFREY HOWARD'S
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

was served on all known parties to this action, by U.S. Mail, postage prepaid, upon:

Served via U.S. Mail:

Craig Cunningham
5543 Edmondson Pike, Ste. 248
Nashville, TN 37211
Plaintiff, Pro Se

Peter Polselli
50 Danes Street
Patchogue, NY 11772
Defendant, Pro Se

J. Anne Tipps
STITES & HARBISON, PLLC
401 Commerce St., Ste. 800
Nashville, TN 37219

Katrina L. Dannheim
STITES & HARBISON, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352
Attorneys for Enagic USA, Inc.



Lavenia S. Brown